

336.700 Prohibition against requiring waiver of statutory rights as a condition of employment -- Exceptions -- Arbitration agreements.

- (1) As used in this section, "employer" means any person, either individual, corporation, partnership, agency, or firm, that employs an employee and includes any person, either individual, corporation, partnership, agency, or firm, acting directly or indirectly in the interest of an employer in relation to an employee; and "employee" means any person employed by or suffered or permitted to work for an employer.
- (2) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary and except as provided in subsection (3) of this section, no employer shall require as a condition or precondition of employment that any employee or person seeking employment waive or otherwise diminish any existing or future claim, right, or benefit to which the employee or person seeking employment would otherwise be entitled under any provision of the Kentucky Revised Statutes or any federal law.
- (3) Notwithstanding subsection (2) of this section:
 - (a) Any employer may require an employee or person seeking employment to execute an agreement for arbitration, mediation, or other form of alternative dispute resolution as a condition or precondition of employment;
 - (b) Any employer may require a former employee to execute an agreement to waive an existing claim as a condition or precondition for the rehiring of the former employee as part of a settlement of pending litigation or other legal or administrative proceeding;
 - (c) Any employer may require an employee or person seeking employment to execute an agreement to reasonably reduce the period of limitations for filing a claim against the employer as a condition or precondition of employment, provided that the agreement does not apply to causes of action that arise under a state or federal law where an agreement to modify the limitations period is preempted or prohibited, and provided that such an agreement does not reduce the period of limitations by more than fifty percent (50%) of the time that is provided under the law that is applicable to the claim; and
 - (d) Any employer may require, as a condition or precondition of employment, an employee or person seeking employment to agree for the employer to obtain a background check or similar type of personal report on the employee or person seeking employment in conformance with a state or federal law that requires the consent of the individual prior to an employer's receipt or use of such a report.
- (4) An arbitration agreement executed by an employer and an employee or a candidate for employment under subsection (3)(a) of this section shall be subject to general contract defenses as may be applicable in a particular controversy, including fraud, duress, and unconscionability.
- (5) In accordance with the Federal Arbitration Act, arbitration under subsection (3)(a) of this section shall safeguard the effective vindication of legal rights, including:
 - (a) Providing a reasonable location for the arbitration;

- (b) Mutuality of obligation sufficient to support the agreement to arbitrate;
 - (c) Ensuring procedural fairness for the parties to access arbitration, including a fair process for selecting an impartial arbitrator and the equitable, lawful allocation of arbitration costs between the parties;
 - (d) Ensuring that the parties to the agreement shall have at least one (1) channel for the pursuit of a legal claim, either by requiring the claim to be arbitrated individually pursuant to the agreement or otherwise; and
 - (e) Empowering the arbitrator to award all types of relief for a particular type of claim that would otherwise be available for a party through judicial enforcement, including punitive damages as provided by law.
- (6) An arbitrator selected to arbitrate an agreement entered into pursuant to this section shall disqualify himself or herself if he or she has any of the conflicts enumerated under KRS 26A.015(2).
 - (7) If an arbitration agreement fails to specify the manner of procedure to govern the arbitration process, such as, for example, by failing to designate arbitral protocols promulgated by the American Arbitration Association or similar organization, then the arbitrator shall use the Kentucky Rules of Civil Procedure in the conduct of the arbitration.
 - (8) This section shall apply prospectively and retroactively. Any provision of an agreement executed prior to June 27, 2019, that violates the requirements of subsection (3)(c) of this section shall be stricken from the agreement and shall not operate to invalidate the entire agreement.
 - (9) The provisions of this section shall not apply to collective bargaining agreements entered into between employers and the respective representatives of member employees.

Effective: June 27, 2019

History: Amended 2019 Ky. Acts ch. 75, sec. 1, effective June 27, 2019. -- Created 1994 Ky. Acts ch. 304, sec. 1, effective July 15, 1994; and ch. 355, sec. 1, July 15, 1994.